

UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (UTOPIA)

BOARD MEETING MINUTES

December 13, 2021

10:00 AM

UTOPIA FIBER OFFICES
5858 SOUTH 900 EAST
MURRAY, UTAH 84121

Board Members Present:

**Board Members Joining
Electronically:**

Wayne Pyle – Chair, West Valley City
Councilmember Jeffrey Lambson – First Vice Chair, Orem City
Adam Cowie – Second Vice Chair, Lindon City
Shawn Warnke – Fourth Vice Chair, Tremonton City
Matt Dahl – Midvale City
Mayor Blair Camp – Murray City
Councilmember Robyn Mecham – Centerville
Councilmember Clint Morris - Layton
Todd Christensen – Perry City
Jason Sant – Alternate, Payson City
Jason Roberts – Alternate, Brigham City

Officers Present:

Roger Timmerman – UTOPIA Executive Director
Laurie Harvey – UTOPIA Chief Financial Officer
Christa Evans – UTOPIA Secretary
Joshua Chandler – UTOPIA General Counsel

**Officers Joining
Electronically:**

Aaron Leach – UTOPIA Chief Technology Officer
Kim McKinley – UTOPIA Chief Marketing Officer
Jeff Erwin – UTOPIA Chief Operations Officer

**Others Joining
Electronically:**

1. WELCOME AND INTRODUCTIONS

The UTOPIA Board of Directors held a board meeting on December 13, 2021. The meeting was live streamed to allow public viewing. UTOPIA Chair, Wayne Pyle (West Valley City) called the meeting to order at 10:00 AM.

UTOPIA Votes Present: 452
UTOPIA Majority Vote: 279
UTOPIA 2/3 Vote: 371

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2. APPROVAL OF MINUTES – OCTOBER 18, 2021

There was no discussion on the minutes.

ACTION: Mayor Blair Camp (Murray City) MOVED to approve the minutes from the UTOPIA board meeting held October 18, 2021. Matt Dahl (Midvale City) SECONDED the motion. A voice vote was taken - vote was unanimous.

3. CONSIDER APPROVAL OF RESOLUTION UT 21-05: EXECUTION OF THE FIRST AMENDED FIBER COMMUNICATION SERVICE CONTRACT AMENDING A SERVICE CONTRACT BETWEEN BOZEMAN FIBER AND UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (UTOPIA); AUTHORIZING UTOPIA TO EXECUTE AND DELIVER THE SAME; AND RELATED MATTERS

Mr. Roger Timmerman, UTOPIA Executive Director, stated this is an amendment to an agreement already approved with Bozeman Fiber. Changes were made to the structure of the bond repayment. UTOPIA has a fee structure the organization is entitled to no matter what. UTOPIA is not financing the project and will charge for services provided such as design and NOC services, like Idaho Falls. Idaho Falls has been a good source of revenue growth for UTOPIA and is the fastest growing revenue right now. Bozeman is expected to grow even faster. If, in the worst case scenario, Bozeman is unable to make their bond payments, UTOPIA would defer 30% of its fees to cover that. That was needed for the purposes of securing financing.

Ms. Laurie Harvey, UTOPIA Chief Financial Officer, clarified it only applies to the 50% UTOPIA is receiving from service providers. It does not have an impact on the 3% UTOPIA is entitled to on construction invoices.

Mr. Timmerman stated this should not impact UTOPIA financially and is a secondary position for paying the bonds.

Mr. Pyle asked about the effect to UTOPIA if the organization bears the full cost from a service provision standpoint and then the project goes under.

Mr. Timmerman stated UTOPIA will not be out any money on this project. Work for this project is expected to be handled by existing resources and staff. The forecast is 10,000 subscribers once the project reaches maturity. At that point, there would be about \$10 to 20 million in construction, engineering, and materials that UTOPIA will collect a 3% charge from. On the revenue side, if there were only 5,000 customers, UTOPIA would still be entitled to 50% of the transport revenue. Seventy percent of that would be guaranteed to UTOPIA, 30 % would be subject to deferral if needed to cover debt service on the bond. In that scenario, the organization would still get \$40,000 per month without any staff or incremental cost. Reaching the forecast of 10,000 subscribers would give UTOPIA revenue of \$100,000 each month.

Mr. Pyle summarized UTOPIA will not incur any cost because of this contract change. It is just something that was contractually required for Bozeman to get the bonding deal.

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Mr. Timmerman stated even if the project renders only 5,000 customers, UTOPIA will still come out on the other end in a better situation.

Mr. Pyle stated even if the project gets bonded and never built, UTOPIA does not bear any costs other than soft costs used to get to this point. UTOPIA would only lose the potential of revenue.

Mr. Timmerman stated that was correct.

Ms. Harvey stated, based on the model that has been put together, revenue of over \$2 million a year is expected by 2026. The lowest coverage year without subsidizing was revenue of 1.3 times debt service. The advisors felt that needed to get up to 1.5 times. The best way staff knew how to do that was to subsidize a portion of the revenue so the debt service coverage could come out before the 30%. It is fully expected for UTOPIA to get 100% of the revenue.

Mr. Timmerman stated this consulting agreement is very similar to what UTOPIA is doing in Idaho Falls which is the agency's fastest growing city. Bozeman is expected to grow even faster. Idaho Falls built footprints incrementally while Bozeman priced their bonds to complete a full buildout that will be much faster than Idaho Falls. This will make a huge effect for UTOPIA financially.

Mr. Adam Cowie, Lindon City, asked for one more assurance that the contract does not put UTOPIA on the hook financially for any bond obligation. If Bozeman completely fails to perform, UTOPIA is not financially obligated in any way.

Mr. Timmerman stated that was correct.

Mr. Jason Roberts, Brigham City, asked if Bozeman declaring bankruptcy would be a default event.

Mr. Timmerman stated this is not Bozeman City. Bozeman Fiber is a non-profit created by the city, school district and a few other partners. The financing is an Industrial Revenue Bond under Gallatin County. Gallatin County is the conduit for the financing on the project. If the whole thing blew up, UTOPIA has zero obligation on the bond and would walk away from the deal. That is highly unlikely.

Mr. Roberts clarified if the non-profit organization of Bozeman Fiber goes defunct, then UTOPIA does not need to provide services anymore and unravels the deal.

Mr. Timmerman stated that was correct.

Mr. Pyle pointed to the language in section 5.3 and 5.4 of the contract for an explanation. Section 5.3 specifically says UTOPIA is not obligated for Bozeman Fiber debt or financing. Section 5.4 illustrates the terms of the termination.

Mr. Timmerman stated this is a good opportunity to pay off some of the UTOPIA debt. No new debt is being taken on, but it creates a great opportunity for revenues to grow in UTOPIA. He

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expects to bring partnerships like this to the board in the future. There is an enormous demand for the expertise the UTOPIA team has and not a lot of people out there that know how to do it. UTOPIA is positioned perfectly to take advantage of that.

Ms. Harvey stated the bond price and true interest cost is 3.78% and these bonds were not rated. A lot was based on the partnership Bozeman Fiber has established with UTOPIA. There were a lot of UIA bond holders that purchased the Bozeman Fiber bonds.

ACTION: Mayor Blair Camp (Murray City) MOVED to approve Resolution UT 21-05 executing an amendment to a service contract between Bozeman Fiber and UTOPIA. Clint Morris (Layton City) SECONDED the motion. A roll call vote was taken - vote was unanimous.

4. 2022 BOARD MEETING SCHEDULE

Mr. Pyle explained the 2022 UIA/UTOPIA board meeting schedule is set for the second Monday of the month, every other month, unless there is a holiday (i.e. October). UIA meetings will begin at 8:30 am; UTOPIA meetings will begin at 10:00 am. It has been emailed to the board and posted according to state law.

ACTION: Shawn Warnke (Tremonton City) MOVED to approve the 2022 board meeting schedule. Robyn Mecham (Centerville City) SECONDED the motion. A voice vote was taken - vote was unanimous.

5. OPEN AND PUBLIC MEETINGS ACT TRAINING

Mr. Josh Chandler, UTOPIA General Counsel, stated the legislature requires annual training regarding the Open Meetings Act. There were not a lot of substantive changes this year. Changes regarding notice matters and conduct with electronic meetings were consistent with current practices by UTOPIA. One clarification is that during a closed meeting a vote can be held to end the closed meeting. The legislative intent is that public agencies take action and conduct deliberations openly. A meeting is defined as “The convening of a public body, or specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter of which the public body or specified body has jurisdiction or advisory power.” The default position is the meeting will be open unless the meeting in its entirety or a portion of the meeting qualifies under the provisions for a closed meeting. To hold a closed meeting there must be a quorum present and, in most circumstances, a two-thirds vote to close a meeting. The common circumstances to close a meeting are as follows:

- discussion of the character, professional competence, or physical or mental health of an individual
- strategy sessions to discuss pending or reasonably imminent litigation
- strategy sessions to discuss the purchase, exchange, or lease of real property
- discussion regarding deployment of security personnel, devices, or systems
- investigative proceedings regarding allegations of criminal misconduct.

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As a reminder, there cannot be a second meeting occurring through electronic means while an open meeting is happening. The Open Meetings Act is clear in stating that communication between members of a body are permitted when the meeting is not happening. The safest reading of the statute would be it is not the intent to have those communications taking place during an open meeting. During a meeting, anything that needs to be said should be said openly. There are two potential penalties for violating the open and public meetings act. One is the final action taken by the body may be voided by the courts. The second possible outcome for violation of the act is the possibility of criminal charges.

Mr. Todd Christensen, Perry, asked about members texting others during a meeting and having private conversations that should be public. He asked if the State has made any specific ruling on that.

Mr. Chandler stated it has not been addressed in the black letter of the law, but section 2.10 says communications outside of a meeting are okay. It does not outright prohibit it during a meeting, but the safest course of action is to avoid that.

6. UTOPIA FINANCIAL UPDATE

Ms. Harvey stated, typically, the auditors would be present at the December meeting, but staff is not ready yet and is working on fixed assets and depreciation for UTOPIA. Audit reports are expected to be issued by December 31 and they will be sent out. The auditors will be at the next meeting. The financials look similar to last year. Last year UTOPIA had a net deficit of \$282 million. This year the net deficit will increase by \$17 million resulting in a \$300 million net deficit. There is a little bit of net revenue but the hits to UTOPIA are in interest expense. Interest expense is about \$14 million which is a little less than last year because the interest rate on Notes Payable to Cities is tied to the PTIF and has decreased. A large part of that is the interest accrued on the notes to UTOPIA cities and the depreciation expense of \$5 million. Revenue at UTOPIA is increasing and will increase substantially with the Bozeman contract. There have been staffing changes; Jess Rudd has been the Treasurer for five years and retired. The job has been posted internally and she plans to fill that position internally. She showed a graph of the combined recurring revenue for UTOPIA and UIA. Combined recurring revenue per month is just short of \$3 million. UIA is \$2.3 million of that revenue and UTOPIA represents \$700,000. UTOPIA revenue is beginning to creep up due to Idaho Falls which is currently where the highest customer growth is. As Bozeman comes on board UTOPIA revenues will start to grow. The next chart showed the combined recurring revenue increase as a 12-month moving average. There is still a \$40,000 month over month increase and has been consistent for over a year. The next chart showed UIA Revenue vs. Bond Obligation. The gap is widening between bond obligations and revenue. Many bonds are in the capitalized interest period. Several loans are out of capitalized interested and UIA is paying interest on them. The most recent addition was Syracuse, and Santa Clara and Cedar Hills will be added.

7. UTOPIA NETWORK UPDATE

Mr. Timmerman stated the organization continues to grow its customer base across the board. New partnerships are increasing in size and quantity. The UIA Board approved two new city

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partnerships, Santa Clara and Cedar Hills. Politically these are good wins. Santa Clara is geographically far away but is not that bad. There are already customers in St. George and UTOPIA has a data center presence. Santa Clara will be the first City-wide project in Southern Utah. It is small with two footprints and will require one full-time technician in the area. Cedar Hills is very easy as it is intermingled with Pleasant Grove and makes the design much easier. Cedar Hills is a founding member of UTOPIA so discussions have been taking place for a long time and it's nice to finally get approval. There was also a parameters resolution for a general purpose UIA bond of up to \$30 million. This is to fund additional customers and keep up with city growth. Adding customers to existing areas is the most profitable thing the organization can do. Cities continue to be developed and new footprints need to be added. Open trench opportunities are less expensive to build but it does create an expense. There are also backbone improvements the organization is looking to do with these funds. UIA is in great shape and is very tied into UTOPIA. The buildout of the network is nearing completion. There is a little left in West Valley, Orem, and Murray. The rest are little pockets here and there. It should be wrapped up over the next couple of months. The priority will then shift to maximizing debt relief to the cities. Deals in UIA create job cost offset and revenue potential. Also, the Idaho Falls and Bozeman projects pose great opportunities for revenue. Staff intends to get more aggressive with relieving the debt burden. He presented the most recent subscriber report. Address Availability shows the number of addresses where fiber is available. There are over 140,000 locations in Utah that have access to UTOPIA Fiber. Subscribers are just under 44,000. He showed subscribers by city. Bozeman, Pleasant Grove and Syracuse will be coming on as well. Clearfield is the newest one that is not to the threshold of where it needs to be but is trending ahead of where it needs to. He presented residential take rates which continue to increase. It is still the best broadband in the state and the fastest in the country.

Mr. Pyle asked for a completion date for the original city footprints.

Mr. Timmerman stated the furthest out completion date for West Valley is scheduled for Summer, but the target is Spring. The others will wrap up earlier than that. There has been a massive amount of construction going on in West Valley. There needs to be some sort of celebration once all of this is completed.

Mayor Blair Camp, Murray, stated this will be his last board meeting because his term will be ending soon. If someone new is not appointed, Brenda Moore will participate in the meeting. He is thankful he finally has UTOPIA at his house.

8. ADJOURN

There being no further business of the UTOPIA Board of Directors, the meeting on Monday, December 13, 2022, was adjourned at 10:51 AM.

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I hereby certify the foregoing to be a true and accurate record of the proceedings of this meeting of the UTOPIA Board of Directors.



Christa Evans, UTOPIA Secretary

Approved this 14th day of February, 2022

